FILE COPY

Office - Supreme Court, U.
FILED
MAR 19 1945
CHARLES ELMORE CROPL
CLE

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 980

DEWEY HENRY WOMBLE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI.

NATHANIEL A. BROWN,
Bank of America Building, Stockton 5, California,
Attorney for Petitioner.

HAROLD WYATT,
Belding Building, Stockton 3, California,
Of Counsel.

Table of Authorities Cited

Cases	Pages
Alpert v. U. S., 12 F. (2d) 352	4
Biggerstaff v. U. S., 260 F. 296	5
Drossos v. U. S., 16 F. (2d) 833	4
Johnson v. U. S., 215 F. 679	5
Kann v. U. S., 65 Sup. Ct. Rep. 148	6
Magnum Import Co. v. Coty, 262 U. S. 159	6
Mergenthaler Linotype Co. v. Davis, 251 U. S. 256	6
Mortensen v. U. S., 64 Sup. Ct. Rep. 1037	5
United States v. Grace, 73 F. (2d) 294	4
Van Pelt v. U. S., 240 F. 346	5

Codes	
Judicial Code, Section 240	2
Title 18 U.S.C.A. 398, Section 2	3, 5
Title 28 U.S.C.A. Section 347	2

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

DEWEY HENRY WOMBLE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI.

Because of a misunderstanding of the rule, a separate typewwritten statement accompanied the petition for a writ of certiorari in this case, setting forth the reasons of the petitioner for feeling that this Court has jurisdiction to review the judgment. The clerk of the Supreme Court returned the typewritten statement with the notation that no such statement was contemplated by the rules of the Supreme Court in certiorari proceedings. This left what we sincerely believe to otherwise be a meritorious petition with

only a cursory and ineffectual statement of a basis for jurisdiction to review the judgment. We are therefore submitting herewith a supplement to our petition heretofore filed with the respectful request that it be filed and considered as an appendix to the last paragraph appearing on page six of our petition.

BASIS FOR JURISDICTION TO REVIEW JUDGMENT.

It is respectfully contended by the petitioner above named, that this Court has jurisdiction upon appeal to review the judgment or orders of the United States Circuit Court of Appeals for the Ninth Circuit dated December 22, 1944 and January 20, 1945 for the following reasons:

Title 28 U.S.C.A. Section 347 (Judicial Code, section 240, amended) provides:

> "(a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition or any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and the like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

The statute of the United States, the proper application of which is involved herein is T 18 U.S.C.A., 398 which provides that it shall be unlawful for any

person to knowingly, wilfully and feloniously transport, cause to be transported, or assist in transporting in interstate commerce, a woman with the intent and purpose on the part of such person that said woman shall practice prostitution or engage in other immoral practices.

Petitioner was convicted of a violation of T 18 U.S.C.A., 398, section 2, of the White Slave Act, popularly known as the Mann Act in the United States District Court for the Northern District of California, Northern Division. The Circuit Court of Appeals for the Ninth Circuit affirmed this judgment on December 22, 1944 and denied petition for rehearing on January 20, 1945. The Circuit Court of Appeals held that the evidence introduced was substantial and sufficient to support the judgment of the trial Court.

At no stage of the proceedings has it been contended by the government that there was ever introduced any evidence of prostitution, illicit or even improper conduct or behavior of the parties prior to the arrival at their destination. There was direct evidence from the lips of the only government witness concerning this phase of the case that he was a companion of petitioner and the woman at all stages of the journey and that it was made for the purpose of obtaining employment and that he never heard it suggested that the trip was to be made or was being made for any other purpose. He testified that several stops were made enroute and that he and petitioner sought employment in defense work at their trade of boilermakers and that they also sought such employment the day

following their arrival in California. The unlawful intent or purpose was entirely inferred from conduct of the parties subsequent to their arrival at their destination. This was in conflict with decisions previously rendered in other of the United States Circuit Courts,

> "The statute makes the intent and purpose an element of the crime, and, if the journey was planned with no immoral purpose at the time, no crime was committed no matter what may have occurred thereafter."
>
> *United States v. Grace,* 73 F. (2d) 294, 295.

> "The intent and purpose is a fact and must be established by the proof to the satisfaction of the jury beyond a reasonable doubt; and being an element of the offense itself its existence or nonexistence must be determined by the jury and not by the court. It may be inferred from circumstances, but an immoral purpose first conceived at the end of the journey is not sufficient."
>
> *Drossos v. U. S.,* 16 F. (2d) 833, 834.

In *Alpert v. U. S.,* 12 F. (2d) 352, the Court said:

> "The only evidence of what took place at the hotel in Pottsville was that given by the young woman, and whether or not the plaintiff in error intended to indulge in sexual relations before leaving the State of New York is left entirely to inference. There is no evidence of any arrangement between the couple or understanding between them for illicit intercourse after going to Pennsylvania. The fact that a journey from one state to another is followed by such intercourse, where the journey was not for that purpose, but

wholly for other reasons, cannot be regarded as a violation of that act. United States v. Fisher (C.C.A.), 226 F. 670. To justify conviction, there should be convincing evidence of the intention to transport the woman for immoral purposes, and that it was formed before the woman reached the state to which she was being transported. If the intention referred to did not exist before the woman reached the state to which she was being transported, but was formed after reaching the state in which the illicit relationship is had, conviction under the act cannot be had. Sloan v. United States (C.C.A.), 287 F. 91."

See also:

Biggerstaff v. U. S., 260 F. 296;
Johnson v. U. S., 215 F. 679;
Van Pelt v. U. S., 240 F. 346.

The judgment in this case is also in conflict with the principles laid down by this Court in its decision in *Mortensen v. U. S.*, decided May 15, 1944 and reported in 64 Sup. Ct. Rep. 1037 where at page 1039 this Court said:

"An intention that the woman or girls shall engage in the conduct outlawed by Section 2 must be found to exist before the conclusion of the interstate journey and must be the dominant motive of such interstate movement. And the transportation must be designed to bring about such result. Without that necessary intention and motivation, immoral conduct during or following the journey is insufficient to subject the transporter to the penalties of the Act."

This case presents the question of whether or not the federal government has the right through the enactment of a criminal statute to control or punish the immoral acts of a citizen conceived and performed entirely within the boundaries of a single state.

It presents the question of whether or not the Mann Act seeks to make unlawful the movement of one of the citizens of the United States from one state to another where the only evidence of wrongdoing relates to a time after his arrival in the state of his destination.

If as we contend these questions are actually presented by the record in this case it would appear that no argument or statement of grounds upon which it is contended they are substantial are required. Their substantiality seems self evident.

Additional cases which we believe sustain jurisdiction are:

Mergenthaler Linotype Co. v. Davis, 251 U. S. 256;
Magnum Import Co. v. Coty, 262 U. S. 159;
Kann v. U. S., 65 Sup. Ct. Rep. 148;
Mortensen v. U. S., supra.

Dated, Stockton, California,
March 12, 1945.

NATHANIEL A. BROWN,
Attorney for Petitioner.

HAROLD WYATT,
Of Counsel.